

¶ 205. Louisiana's local exchange markets, which are completely dominated by BellSouth, are certainly no exception. BellSouth currently faces essentially no facilities-based competition for residential customers in the State. Hubbard/Lehr Aff. ¶ 61. Facilities-based CLECs provide service on only about 0.19% of the access lines in BellSouth's Louisiana service territory. Id. BellSouth has unbundled only about 100 loops for business customers and has unbundled no loops for residential customers. Id. Even if resale is taken into account, BellSouth continues to provide the exclusive service on about 98% of the access lines in its Louisiana service territory. Id. In sum, it is clear that customers in BellSouth's Louisiana service areas have no realistic choice in selecting their provider of local exchange service. As BellSouth's overwhelming market share vividly illustrates, there are currently no competitors capable of constraining BellSouth's ability or incentive to engage in anticompetitive behavior. Id. ¶¶ 61-74.

The alleged competitive threat from wireless providers trumpeted by BellSouth (Br. 9-15) does not alter this conclusion. As described above, although PCS might offer a viable alternative to wireline service in the future, PCS is not a viable alternative today. Notably, PCS has limitations that make it unsuitable for many households as a potential replacement for wireline service. Roderick Aff. ¶¶ 6-9. As a result, BellSouth's own data for Louisiana reflect PCS penetration rates of only about 1.5 percent, and BellSouth's own survey results indicate that, among these small numbers of PCS subscribers, only 4 to 6 percent have replaced their residential wireline phones with PCS service -- in other words, less than 1 percent of Louisiana consumers have replaced their local wireline service with PCS. Hubbard/Lehr Aff. ¶ 62.

Faced with a Louisiana local exchange marketplace with almost no meaningful facilities-based competition, BellSouth raises essentially three arguments. First, BellSouth argues that allowing BellSouth into long distance will create significant incentives for the major IXC's to

enter into the local market. Br. 105-06. The Commission, however, already rejected this same argument because it wrongly presumes that the lack of local competition is due to CLECs' failures to devote adequate resources to the endeavor.

BellSouth's argument presumes that BellSouth's local markets are already open to competition and that the lack of local competition in South Carolina is due solely to competitors' failure to devote adequate resources in South Carolina. As discussed above, however, we find in this Order that BellSouth has not yet demonstrated that it complies with the competitive checklist, and that such deficiencies may be hindering successful entry in South Carolina on either a resale basis or through the use of unbundled network elements.

South Carolina Order ¶ 25.

Second, BellSouth asserts that it has taken all steps necessary to permit local competition in Louisiana to flourish and that "[t]he 1996 Act's temporary prohibition on bundling by the major interexchange carriers pending BellSouth's interLATA entry [47 U.S.C. §271(e)(1)] is the only barrier remaining to full local competition in Louisiana." Br. 106-07 (emphasis in original). As described above, BellSouth's claim is belied by the myriad ways that BellSouth now obstructs each path of entry.

Third, BellSouth argues that its market-opening steps are irreversible. Br. 107. Aside from the fact that BellSouth has not taken all of the market-opening steps required by the Act, the actions it has taken are, in critical respects, not irreversible. As discussed above, there are many ways in which BellSouth's inability or unwillingness to comply with its checklist obligations are blunting, and can continue to blunt and even reverse, the nascent entry that is taking place in Louisiana. A paradigmatic example of this problem is BellSouth's retention of unilateral change control capability over its OSS, which precludes any certainty that BellSouth's OSS will be nondiscriminatory in the future. Bradbury Aff. ¶¶ 32-44.

2. BellSouth's Premature Entry Into The Interexchange Market Would Provide BellSouth Incentive And Opportunity To Harm Competition

Currently, BellSouth's only incentive to open local markets is the prospect of long distance entry. Hubbard/Lehr Aff. ¶¶ 100-03, 113-19. Once BellSouth is granted interLATA authority, its sole incentive will be to further impede the development of local competition, both to protect monopoly revenues it enjoys from local exchange and exchange access services, and to maintain its anticompetitive advantages over other carriers that would otherwise seek to provide bundles of local and long distance services in competition with it. Hubbard/Lehr Aff. ¶¶ 100-19; Bork Aff. ¶ 20; see DOJ SC Eval., Schwartz Supp. Aff. ¶ 34.

Granting BellSouth's application now would therefore immediately create a second monopoly in addition to BellSouth's current monopoly over local exchange service -- a monopoly over the provision of bundled packages consisting of BellSouth's local service and long distance service (which BellSouth could buy at a wholesale discount far greater than the 20.72 percent discount available to would-be CLECs in Louisiana). BellSouth witnesses Gilbert and Hausman argue that BellSouth must be allowed to enter long distance to compete for the provision of bundled goods. Gilbert Aff. ¶¶ 6-17; Hausman Aff. ¶ 6. However, as the record in this case demonstrates, there is no meaningful competition in the local market. Therefore, BellSouth would be the only carrier with the opportunity to offer end-to-end service in significant volumes, and would be able to foreclose competition for the numerous subscribers that would find that offering attractive. Hubbard/Lehr Aff. ¶¶ 108, 132, 148-51.

BellSouth could also harm long distance competition in numerous ways, such as price squeezes against its long distance competitors by continuing to impose inflated charges for non-

competitive exchange access;⁴² cross-subsidies from its local exchange business to its long distance business (see Hubbard/Lehr Aff. ¶ 110; Bork Aff. ¶¶ 21-29; Baumol Aff. ¶¶ 39, 46-50); and discrimination in the pricing, development, provisioning, and maintenance of monopoly exchange access services to its "captive" long distance competitors, so as to raise their costs and degrade the quality of their service. Hubbard/Lehr Aff. ¶¶ 75-90, 108-09; Miller/Gropper Aff. ¶¶ 21-49. BellSouth's principal response to the risk that it will engage in anticompetitive conduct if permitted in the long distance market is to trumpet the efficacy of regulation. If regulation alone were sufficient to deter anticompetitive conduct, however, Congress need not have included a public interest test in the Act at all, but could have merely conditioned BOC interLATA entry upon the adoption of appropriate regulations. See Ameritech Michigan Order ¶ 388 ("Section 271 . . . embodies a congressional determination that . . . local telecommunications markets must first be opened to competition so that a BOC cannot use its control over bottleneck local exchange facilities to undermine competition in the long distance market.")

Furthermore, BellSouth fails to acknowledge that its anticompetitive conduct would remain exceptionally "difficult to police, particularly in situations where the level of the BOC's cooperation with unaffiliated . . . carriers is difficult to quantify." Non-Accounting Safeguards NPRM ¶ 139; Hubbard/Lehr Aff. ¶¶ 83-90; Baumol Aff. ¶¶ 34-50; Bork Aff. ¶¶ 24-29. BellSouth contends that discrimination is impossible because it would require conduct that is invisible to "other interexchange carriers . . . [and] regulators, yet is so apparent to customers

⁴² See Hubbard/Lehr Aff. ¶¶ 105-07; Baumol Aff. ¶¶ 13-15, 39; Miller/Gropper Aff. ¶¶ 58-63 (setting forth examples). Indeed, it is precisely this risk that recently caused one judge to comment that "[w]ithout access reform, it would be unreasonable to allow BA-PA into the interLATA toll market, or to declare the intraLATA market competitive as requested by BA-PA." Pennsylvania ALJ Access Reform Decision at 74.

that it drives them to switch to BellSouth's long distance service, but not the service of some other competitor." Br. 97. But discrimination need not be blatant or massive in order to raise a rival's costs and degrade its quality enough to tilt the playing field in favor of BellSouth's affiliate. Moreover, BellSouth's rhetoric entirely misses the central point about the limitations of regulation and competitor vigilance: Even where the discrimination is not difficult to observe, it will remain costly, time-consuming, and in some cases extremely difficult to prove that cross-subsidies, cost shifting, or service degradation is the product of anticompetitive discrimination rather than justifiable business practice. Hubbard/Lehr Aff. ¶¶ 84-90; Baumol Aff. ¶¶ 39-42; Bork Aff. ¶¶ 24-29; Schwartz Supp. Aff. ¶ 38. These are the very reasons why the BOCs were excluded from the interLATA market to begin with, and why Congress preserved that injunction in section 271.

Again, BellSouth's own conduct best illustrates the extreme costs of relying exclusively on regulation to control the anticompetitive behavior of a monopolist. In addition to its prolonged failure to comply with sections 251 and 252, for example, BellSouth has consistently opposed introducing -- and taken repeated actions to frustrate -- competition of any kind into the intraLATA toll market, and has even opposed services that could incidentally be used to complete such calls. See Miller/Gropper Aff. ¶¶ 58-62 (discussing examples). Indeed, BellSouth has been able effectively to forestall implementation of numerous orders and agreements, conduct that is not surprising in light of BellSouth's candid acknowledgment that "[i]t is rational . . . for the dominant incumbent to exploit the regulatory regime to the greatest possible extent without exposing itself to the threat of intervention or adverse changes to the regime."⁴³

⁴³ BellSouth New Zealand, Regulation of Access to Vertically-Integrated Natural Monopolies: A Discussion Paper at 2 (Sept. 29, 1995).

In sum, for so long as BellSouth's competitors remain critically dependent upon access and interconnection to BellSouth's network, BellSouth can engage in numerous forms of discrimination that cannot be forestalled by regulation. BellSouth's own blatant refusals to comply with the requirements of the Act and this Commission's orders are powerful evidence that it would be contrary to the public interest to admit BellSouth into the long distance market until substantial facilities-based competition secures a competitively open local market.

B. Because The Interexchange Market Is Already Vigorously Competitive, BellSouth's Claims Of Likely Consumer Benefits From Its Entry Are Baseless.

In arguing that its entry would be in the public interest, BellSouth predicts that its entry into the interexchange market would produce tremendous benefits by making that market more competitive. In particular, it cites "welfare analyses" of the WEFA Group and Professor Jerry Hausman, who each contend that BellSouth's in-region, interLATA entry will drive down long distance prices and stimulate the economy. But the logic of these witnesses is untenable: They anticipate enormous benefits from the entry of one firm into a market that already has hundreds of firms openly fighting for customers, but perceive (to the extent they address the issue at all) only "very small" gains from the removal of entry barriers in a local market that has long been dominated by a single monopolist. Hausman Aff. ¶ 23. To put BellSouth's claims into perspective, introducing competition into local markets could save consumers over \$19 billion per year, more than twice the annual savings estimated by BellSouth (Br. 72) from reducing long distance prices an extraordinary 17 percent. Hubbard/Lehr Aff. ¶¶ 25, 148.

BellSouth's extravagant claims of public benefit depend on mischaracterizations of both local exchange and interexchange markets.⁴⁴ As discussed above, permitting BellSouth to enter the interexchange market while it retains monopoly control of the local exchange market will harm competition in both the local and long distance markets. Moreover, the long distance market already displays the hallmarks of a vigorously competitive market: hundreds of new entrants; declining market share of the formerly dominant carrier; excess capacity; a high rate of customer churn; and declining prices. See Hubbard/Lehr Aff. ¶¶ 28-52 (detailing these facts). As a result, BellSouth's premature entry into that market will not bring the consumer benefits BellSouth promises.

Thus, after an objective examination of the relevant determinants of market power, there can be no tenable claim that the long distance market is non-competitive. In contending otherwise, BellSouth and its experts rely principally on assertions that AT&T's rates have risen notwithstanding significant reductions in access charges. Br. 78; Hausman Aff. ¶ 49; Schmalensee Aff. ¶ 11. Those claims are false. They directly conflict with the Commission's findings, and they ignore data that conclusively show that rates paid by consumers have declined more than access charge reductions precisely because of the intense competition in that market. Hubbard/Lehr. Aff. ¶¶ 37-39; 153.

Discounting the benefit to low-volume customers occasioned by recent reductions in IXCs' basic rates, BellSouth also relies on the fact that basic schedule rates for low-volume

⁴⁴ See Schwartz Supp. Aff. ¶ 18 ("[T]here is much more room to improve economic performance in the local market than in the interLATA market by fostering additional competition. . . .[E]ven a modest dose of increased competition in the local market can be expected to generate major benefits -- in the form of reduced costs, improved quality, increased variety of offerings, rationalization of the price structure in local markets, as well as spillover benefits in adjacent markets for interexchange and integrated services").

customers have increased in recent years. But under the many flat rate plans offered by major IXC's, even low-volume customers need not pay basic rates. BellSouth's contention that many consumers cannot benefit from these plans is false. Br. 79. For example, customers who make most of their calls during peak times can benefit from AT&T's flat \$0.15 rate, while customers who make most of their calls on evenings and weekends can benefit from Sprint's \$0.10 off-peak rate. These flat rate plans also plainly refute BellSouth's specious contention that even "mid-volume callers are denied discounts." Br. 82.

Moreover, increases in basic rates have occurred for competitively benign reasons. Where regulation has kept rates below cost for low-volume customers, AT&T has raised those rates when permitted to do so, and its competitors have followed suit, presumably to avoid attracting low-volume, high-cost customers themselves.⁴⁵ The measure of competition is not at the low end of the market, where regulation artificially depressed prices, but at the middle and high-volume end, where rates can reflect costs and carriers compete aggressively on price and quality to win customers. BellSouth never even attempts to explain why, if long distance carriers can successfully collude, they have offered discounts to high volume customers who provide the most revenue -- or why, if these carriers can collude on price, they do not collude on non-price matters and instead choose to "waste" enormous sums on advertising and other marketing expenditures.

Nor does BellSouth adequately explain (Br. 87) why its "marketing strength will be most pronounced" among low-volume customers, and it offers no plausible reason why it would

⁴⁵ See B. Douglas Bernheim and Robert D. Willig, The Scope of Competition in Telecommunications (AEI 1997) (unpublished manuscript), Chapter 2, at 37-43.

choose to target the least profitable section of the long distance market.⁴⁶ In the absence of such evidence, there is no reason to believe that BellSouth's entry will bring any of the benefits of competition to low-volume long distance customers. See Ameritech Michigan Order ¶ 16.

Also unfounded is BellSouth's argument that SNET's entry into the long distance market illustrates the positive competitive impact of BOC entry into interchange markets. To the contrary, SNET's long distance prices are no lower than prices offered by other IXC's in Connecticut and nationwide. Hubbard/Lehr Aff. ¶¶ 143-47; Selwyn/Gately/Golding Aff. (attached to Hubbard/Lehr) ¶¶ 14-15 & App. 4 thereto, pp. 7-18. Moreover, consumers in Connecticut pay more for total telecommunications than consumers in many other states, including states where the BOC has been excluded from the interLATA market. Id. pp. 7-26. Nor is the fact that SNET has captured significant market share attributable to SNET's greater efficiency. SNET's success is due in large part to its bundling of long distance offerings with its monopoly provision of local services and its aggressive promotion of PIC freezes for its own long distance customers. Hubbard/Lehr Aff. ¶ 120; Selwyn/Gately/Golding Aff. at App. 4, pp. 36-37.

Moreover, SNET has announced that it will undertake a corporate reorganization expressly designed to rid itself of the Act's requirement that it resell local services at a wholesale discount (see Hubbard/Lehr Aff. ¶ 146 (discussing AT&T complaint)) and has distinguished itself through its repeated efforts to evade its responsibilities under the Act and under state law. See Selwyn/Gately/Golding Aff. at App. 4, pp. 27-38. Thus, far from proving the benefits of

⁴⁶ It is far more likely that BellSouth will follow GTE's reported "targeted approach of wooing high volume customers." Communications Daily, 12/3/96, at 1. The article goes on to quote GTE's "President - long distance services" Rob McCoy as explaining, "We're not going after the mass market. That would be inefficient." Id.

permitting a monopoly ILEC into an in-region, interLATA market, SNET's behavior in Connecticut illustrates what an ILEC unconstrained by the section 271 incentive will do to avoid opening its local market to competition.⁴⁷

BellSouth's claim that it will spur competition by underpricing long-distance carriers is thus implausible in the extreme, for prices are already at competitive levels, and BellSouth can achieve no cost advantages except through discrimination, cross-subsidies, and price squeezes. For this reason, BellSouth's reliance upon the WEFA Group's estimate of the impact of BellSouth's in-region interLATA entry on the Louisiana economy is wholly specious. WEFA's conclusions are based on assumptions -- such as that BellSouth's entry will reduce long distance service prices by 25% -- that are empirically unjustified and patently unreasonable. Hubbard/Lehr Aff. ¶¶ 160-62. Moreover, the WEFA study's welfare benefit analysis is also rendered meaningless by its failure even to address the harm to local and long distance consumers -- whose savings from the advent of meaningful local competition would far exceed any savings that might flow from adding yet another long distance competitor (see id. ¶ 148) -- that would be caused by permitting BellSouth to enter the in-region interLATA market before entry barriers to the local market are removed.

BellSouth's present claim that it will offer "initial basic rates" that are "at least 5% lower than the corresponding rates of the largest interexchange carrier" (Br. 85) illustrates the illusory nature of BellSouth's promises: In light of the numerous discount plans available to long

⁴⁷ BellSouth's reliance on the Bell Atlantic/NYNEX Eastern corridor interLATA rates is also misplaced. Although a customer can now presubscribe to Bell Atlantic/NYNEX for Eastern corridor calls, the customer must then dial a 10-XXX carrier access code for all interLATA calls that are not Eastern corridor. As a result, very few customers have presubscribed to Bell Atlantic/NYNEX in the corridor, and almost all Eastern corridor BOC calls require a carrier access code. It is these obvious competitive handicaps, and not greater efficiencies, that have forced Bell Atlantic/NYNEX to offer lower prices. Hubbard/Lehr Aff. ¶ 136 n.101.

distance customers, it is simply absurd to base a claim of lower long distance prices solely upon a proposed "initial" discount off basic rates that no consumer need pay. In all events, it is thus far more likely that BellSouth's entry will comport with the expectations of Pacific Telesis. Internal and proprietary documents of Pacific Telesis candidly acknowledge that "[l]ong distance is one of the most competitive businesses in America," and that Pacific Telesis' own costs in long distance would be significantly higher than AT&T's.⁴⁸ As a result, Pacific Telesis' own witness has admitted that Pacific Telesis does not appear "headed for the Price Club segment of the market" and will instead be at the "Nordstrom's end of the market."⁴⁹

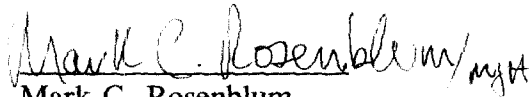
⁴⁸ The documents remain confidential and proprietary to Pacific Telesis. These excerpts were made part of the public record in the state regulatory proceeding concerning certification of Pacific Telesis' affiliate as an interLATA carrier in California. See California Public Utilities Commission Proceeding, Application 96-03-007, Tr. Vol. 4, at 494, 496, 503-04.

⁴⁹ Id. Tr. Vol 10, at 1272.

CONCLUSION

For all of the above reasons, BellSouth's second Louisiana application should be denied.

Respectfully submitted,

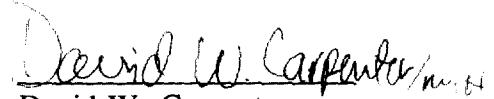


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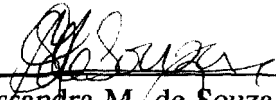
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CERTIFICATE OF SERVICE

I, Cassandra M. de Souza, do hereby certify that I caused a copy of the foregoing Comments of AT&T Corp. in Opposition to BellSouth's Second Section 271 Application for Louisiana to be served by first class mail this 4th day of August, 1998, on all parties on the attached service list.


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